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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,609	11/20/2001	Colin John Taylor	MAR-0010	3445

7590  
Daniel F. Drexler  
55 Griffin South Road  
Bloomfield, CT 06002

08/20/2003

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/989,609

Applicant(s)

TAYLOR, COLIN JOHN

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 14, 15, 17 and 19-28 is/are rejected.
- 7) ☒ Claim(s) 4-9, 11-12, 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 10, 14, 15, 17, and 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent DE 29514083 to Lenz.

Regarding Claims 1 and 24, Lenz teaches an assembly for a water feature with a water reservoir (#10); a pump (#22) disposed in the water reservoir for recycling water therein, in use, **around** at least part of the assembly; and at least one planter (#15) having a drainage passage (#14 and 16), wherein the drainage passage extends through the water reservoir and isolates therefrom liquid drainage from the planter, in use.

Regarding Claim 2, Lenz teaches the base of the planter is defined by an upper wall of the reservoir (#12).

Regarding Claim 3, Lenz teaches in the form of a trough, wherein the base (#12) is recessed relative to an outer periphery of the trough.

Regarding Claim 10, Lenz teaches the drainage passage is formed by short passage part extending from the planter base (#14) and defining a socket or spigot in or at which a pipe (#16) is engaged to complete the drainage passage.

Regarding Claim 14, Lenz teaches the water pumped by the pump, in use is supplied by means of a pipe connected to the pump to an ornamental member (#20).

Regarding Claim 15, Lenz teaches the ornamental member has an outlet (#25) through which water is discharged, in use, into the water reservoir.

Regarding Claim 17, Lenz teaches the electrical flex of the pump extends out of the assembly through an opening defined by an upstanding projection extending above the level of water in the water reservoir (#28).

Regarding Claim 22, Lenz teaches a multiplicity of drainage passages are provided in a surface of the planter intended to receive, in use, growing medium (Fig. 2).

Regarding Claim 23, Lenz teaches including legs to space a lower surface of the remainder of the assembly from a supporting surface, in use (Fig. 2 bottom corners of element #10).

Regarding Claims 25 and 27, Lenz teaches the drainage passage is permanently open (#14 and 16).

Regarding Claims 26 and 28, Lenz teaches the drainage passage has an opening and an exit in the water reservoir (#16).

Claims 24 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,371,995 to Donhauser.

Regarding Claim 24, Donhauser teaches an assembly for uses as, or forming an accessory for, a water feature with a water reservoir (#12); a pump (#74) disposed in the water reservoir for recycling water therein, in use, around at least part of the

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assembly; at least one planter (#54) having a drainage passage (#68 and 60); wherein the drainage passage isolates from the water reservoir liquid draining from the planter, in use.

Regarding Claim 28, Lenz teaches the drainage passage has an opening and an exit in the water reservoir (#60 and 62).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 29514083 to Lenz.

Regarding Claim 19, Lenz is silent on forming it in one-piece. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Lenz since the modification is merely an engineering design choice for ease of manufacturing and does not present a patentably distinct limitation.

Regarding Claim 20, Lenz is silent on forming by moulding. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings since the modification is merely an engineering design choice selected an old and well-known means of manufacturing to meet cost parameters.

Regarding Claim 21, Lenz is silent on a rectangular trough. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification was merely a change in shape to enhance aesthetic appeal and does not present a patentably distinct limitation.

***Allowable Subject Matter***

Claims 4-9, 11-12, 16, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 10, 14, 15, 17, and 19-28 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that Donhauser isolates the liquid from the planter via the valve (Donhauser #60 and 62). When the valve is in the closed position the liquid is isolated from the reservoir. Applicant has not claimed a time frame for this period of isolation, so the broad nature of the current claim limitation does not distinguish over the teachings of the cited prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
July 23, 2003

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is written in a cursive, flowing style. Below the signature, there is a faint, illegible stamp or text.